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FOIA

Central Intelligence Agency

Washington, D.C. 20505

OLL 84-0477

9 February 1984

Honorable Jack Brooks, Chairman
Committee on Government Operations
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your request for the views of the Central Intelligence Agency (CIA) on H.R. 4431, the "Intelligence Information Act of 1983," and its companion bill S. 1324. This legislation seeks to amend the National Security Act of 1947 to provide the CIA with substantial relief from the unique search and review burdens it faces in complying with the Freedom of Information Act (FOIA). In doing so, this legislation would allow the CIA to improve its responsiveness to FOIA requesters. The CIA strongly supports enactment of this legislation.

Section 3 of this legislation provides for a new title VII to the National Security Act of 1947 (50 U.S.C. 402, et seq.). A new section 701 contains the provisions concerning the processing of FOIA requests to the CIA. Subsection 701(a) gives the Director of Central Intelligence (DCI), in furtherance of his statutory responsibility to protect intelligence sources and methods, the authority to designate as exempt from the search, review, and disclosure requirements of the FOIA operational files located within the Directorate of Operations, the Directorate for Science and Technology, and the Office of Security. The subsection furthermore requires that the operational files within each of these components must document specified areas of intelligence information before they can be recommended by the appropriate Deputy Director or office head for designation pursuant to the procedures in subsection 701(d). The DCI must then provide written approval before any recommended designation becomes effective. By placing the ultimate approval authority with the DCI, the legislation allows the Agency an important degree of flexibility in making designation or dedesignation decisions. In other words, while a given set of operational files may meet the criteria set forth for designation, the DCI would have the discretion not to designate certain files and, eventually, to dedesignate specific files. The legislation specifically requires the implementing regulations to provide for a review of each designation not less than once every ten years.

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Two subsections of section 701 provide exceptions to the exemption of designated operational files from search and review. Subsection 701(a) contains a proviso which requires the search and review of designated operational files in response to a request for (1) information concerning a special activity when the fact of the existence of the special activity is no longer classified; or (2) information reviewed and relied upon during the course of an investigation by various enumerated entities to determine whether there has been an impropriety, or violation of law, Executive Order, or Presidential directive committed in the course of an intelligence activity. In addition, subsection 701(c) requires the search and review of both designated and nondesignated files in response to requests by United States citizens or aliens lawfully admitted for permanent residence for information on themselves pursuant to either the FOIA or the Privacy Act of 1974. The Agency accepts these as reasonable and necessary exceptions to the exemption of designated operational files from search and review.

During the course of the consideration of S. 1324 by the Senate Select Committee on Intelligence, concern was expressed over the extent to which there would be judicial review of the file designations. The result of the subsequent discussions was the addition of a new subsection (e) to the bill which sets forth the parameters of judicial review and the appropriate remedy for noncompliance with the requirements of this section. A similar provision is included in H.R. 4431.

We appreciate the opportunity to comment upon this legislation. With the recent passage of S. 1324 by the Senate, we look forward to consideration of this legislation by your Committee. The Office of Management and Budget has advised that enactment of this legislation would be in accord with the program of the President.

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Deputy Director, Office of Legislative Liaison

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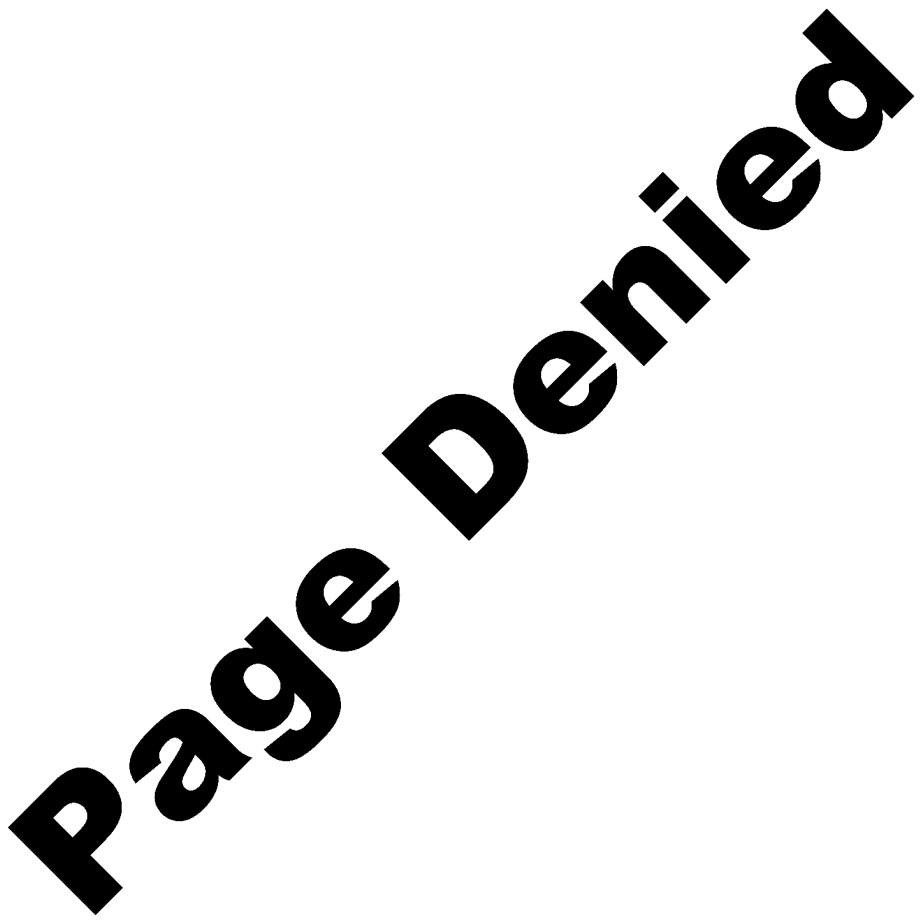

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